

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

WP(C).No. 31160 of 2005(H)

PETITIONER:

**BINDHU T.JOSEPH, W/O. GEORGE MATHEW,
THAMARASSERIL, NENMENI, VELANILAM, KOTTAYAM/MALAYIL
POOTHAKUZHI P.O., PAMPADI, KOTTAYAM (HIGH SCHOOL
ASSISTANT (HINDI), CMS HIGH SCHOOL,
SOUTH PUTHUPPALLY, KAYAMKULAM).**

**BY ADV. SRI.S.SUBHASH CHAND
SMT.M.P.MARY**

RESPONDENTS:

- 1. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL
EDUCATION, GOVERNMENT SECRETAIRAT,
THIRUVANANTHAPURAM.**
- 2. DIRECTOR OF PUBLIC INSTRUCTIONS,
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.**
- 3. DEPUTY DIRECTOR (EDUCATION),
OFFICE OF THE DEPUTY DIRECTOR (EDUCATION),
PATHANAMTHITTA AT THIRUVALLA.**
- 4. DISTRICT EDUCATIONAL OFFICER,
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER,
KANJIRAPPALLY.**
- 5. DISTRICT EDUCATIONAL OFFICER,
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER,
PATHANAMTHITTA.**
- 6. DISTRICT EDUCATIONAL OFFICER,
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER,
MAVELIKKARA.**
- 7. CORPORATE MANAGER, CMS SCHOOLS,
CSI DIOCESAN OFFICE, CATHEDRAL ROAD, KOTTAYAM.**
- 8. ASSISTANT EDUCATIONAL OFFICER,
OFFICE OF THE ASSISTANT EDUCATIONAL OFFICER,
KARUKACHAL.**

BY GOVERNMENT PLEADER SMT.M.R.SREELATHA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER NO.A-2858/2000/L.DIS DT.18.7.2000 ISSUED BY THE 8TH RESPONDENT.

EXT.P2:- COPY OF THE ORDER BEARING NO.B1/7620/2000/K.DIS DT.26.5.01 ISSUED BY THE 4TH RESPONDENT.

EXT.P3:- COPY OF THE ORDER OF APPOINTMENT DT.17.7.01 ISSUED BY THE 7TH RESPONDENT.

EXT.P3(a) :- COPY OF THE ORDER OF THE 5TH RESPONDENT ENDORSED ON THE REVERSE SIDE OF EXT.P3 ORDER.

EXT.P4:- COPY OF THE ORDER OF APPOINTMENT DT. 17.11.01 ISSUED BY THE 7TH RESPONDENT.

EXT.P5:- COPY OF THE APPOINTMENT D.T.25.6.02 ISSUED BY THE 7TH RESPONDENT.

EXT.P6:- COPY OF THE ORDER DT.20.10.05 PASSED BY THE 1ST RESPONDENT.

EXT.P7:- COPY OF THE ORDER D.T.12.10.04 ISSUED BYU THE 3RD RESPONDENT ALLOWING THE APPEAL FILED BY THE 7TH RESPONDENT.

EXT.P8:- COPY OF THE ORDER OF APPOINTMENT DT.26.5.03 ISSUED BY THE 7TH RESPONDENT.

EXT.P9:- COPY OF THE GOVERNMENT ORDER DT.15.12.1990 ALONGWITH APPENDED FROM OF DECLARATION ISSUED BY THE 1ST RESPONDENT.

EXT.P10:- COPY OF THE GOVERNMENT ORDER D.T.5.4.05 ISSUED BY THE 1ST RESPONDENT.

EXT.P11:- COPY OF THE CIRCULAR DT.6.11.89 ISSUED BY THE 1ST RESPONDENT.

EXT.P12:- COPY OF THE JUDGMENT DT.26.10.04 PASSED BY THIS HONOURABLE COURT IN WP(C) NO.30916/04.

EXT.P12(a):- COPY OF THE LAST PAY CERTIFICATE DT.1.9.03 ISSUED BY THE HEADMASTER, CMS HIGH SCHOOL, KUMPLAMPOIKA.

EXT.P13:- COPY OF THE ORDER DT,20.10.05 PASSED BY RESPONDENT NO.1.

EXT.14:- COPY OF THE COMMUNICATION DT.6.12.05 ISSUED BY RESPONDENT NO.7 TO RESPONDENT NO.5 FORWARDING EXT.P13 ORDER.

/TRUE COPY/

K. M. JOSEPH, J.

W.P.C. NO. 31160 OF 2005 H

Dated this the 15th February, 2007

JUDGMENT

Case of petitioner, in brief, is as follows:

Petitioner was appointed as Lower Grade Part Time Hindi Teacher with effect from 18.12.1998 to 19.2.1999 which was approved. Thereafter, in a regular vacancy of LGPT Hindi Teacher, petitioner was appointed on 5.6.2000. She continued till 17.7.2001. The 8th respondent AEO rejected approval by Ext.P1. The 7th respondent Manager challenged the order. By Ext.P2, the fourth respondent DEO directed approval to be granted. However, salary was not paid. Thereafter, petitioner came to be promoted as LGPT Hindi Teacher with effect from 17.7.2001 vide Ext.P3. The appointment was approved and salary was paid. Still further, petitioner came to be promoted as HSA (Hindi) in a maternity leave vacancy. She worked from 17.11.2001 to 26.3.2002. That was on a maternity leave vacancy of one Sinu K. Kunju. Petitioner was not paid salary as

HSA, but instead she was paid salary of the Full Time Hindi Teacher. Petitioner was appointed by Ext.P4 order in the maternity leave vacancy. Since the leave was not sanctioned, petitioner was not paid salary as HSA for the period from 17.11.2001 to 26.3.2002. Petitioner came to be reverted on 27.3.2002. She was paid salary as full time Hindi Teacher, as her appointment was already approved. There was a vacancy of HSA on the incumbent taking leave without allowance. Petitioner came to be appointed from 26.6.2002 to 1.6.2003. (That was approved pursuant to an interim order passed by this Court). Thereafter, petitioner was promoted as HSA against a regular vacancy by Ext.P8 dated 26.5.2003 and she is continuing since 2.6.2003. The appointment was not approved on the basis that the approval of appointment of her senior is pending. One of the teachers working under the Corporate Management approached the Government. Government passed Ext.P10 order. Therein, it is, inter alia, stated as follows:

“ In such circumstances, Government are pleased to order that Director of Public Instruction will implement the direction of Government contained in G.O.(MS) No.258/90 G.Edn. Dated 15-12-1990 accepting the declaration of the Manager as per the prescribed procedure. This is for the sole purpose of mitigating the grievances of teachers who have been denied payment of salary for long periods. All the appointments pending approval under the Corporate Management of CMS Schools, Kottayam also will be examined and the same disposed of within a time frame of 3 months from the date of this order. The direction contained in the Judgment read as 2nd paper above is complied with.”

Ext.P10 Order is dated 5.4.2005. But, no decision as such is taken except in favour of Smt. Meena Mary George who had approached the Government.

2. Heard the learned counsel appearing for the petitioner and also the learned Government Pleader. It is submitted by counsel for petitioner that salary pursuant to Ext.P2 Order is not paid. It is further submitted that the petitioner is not granted approval for Ext.P8 appointment despite Ext.P10 Order. It is further pointed out that Reports have been submitted before the DPI and the DPI is yet to take a decision.

3. A Counter Affidavit has been filed by sixth respondent DEO, wherein it is, inter alia, stated that a detailed Report was filed before the DPI. Learned Government Pleader would submit that it is for the DPI to take a decision in the matter ultimately in the light of the facts and Ext.P10 Order. She would further submit that as far as non-implementation of Ext.P2 is concerned, there can be no objection in implementing Ext.P2 Order. Accordingly, there will be a direction to second respondent, Director of Public Instruction, to implement Ext.P2

order and the monetary benefits due to petitioner shall be paid within a period of one month from the date of receipt of a copy of this Judgment. In regard to the complaint regarding non-approval of Ext.P8 appointment also, a decision has to be taken by the DPI even according to the stand taken by learned Government Pleader. The DEO has also submitted a detailed report before the DPI. Accordingly, there will be a direction to second respondent to consider the matter relating to approval of appointment of petitioner arising out of Ext.P8 order with notice to petitioner, 7th respondent Manager, Mrs. Sinu K. Kunju and any other affected party, and take a decision in accordance with law, within a period of two months from the date of receipt of a copy of this Judgment. Second respondent DPI will bear in mind Ext.P10 also when he takes a decision. The interim order dated 25.11.2005 relating to payment of salary will continue till a decision is taken by second respondent. If the maternity leave of Mrs. Sinu K. Kunju is granted, it will be open to petitioner to take up before the appropriate authority, the complaint about

salary not being paid as HSA during the period in question.

The Writ Petition is disposed of as above.

Kbk.

K. M. JOSEPH, JUDGE